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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/810,658	03/19/2001	Toshiaki Takaoka	04329.2539	9026

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EXAMINER	
DANG, KHANH NMN	

ART UNIT	PAPER NUMBER
2111	8

DATE MAILED: 04/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

RR4

Advisory Action	Application No. 09/810,658	Applicant(s) TAKAOKA ET AL.	
	Examiner Khanh Dang	Art Unit 2111	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 3 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.

b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.

2. ☐ The proposed amendment(s) will not be entered because:

 (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);

 (b) ☐ they raise the issue of new matter (see Note below);

 (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

 (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

 NOTE: _____.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.

4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

5. ☒ The a)☐ affidavit, b)☐ exhibit, or c)☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: *See Continuation Sheet*.

6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.

7. ☒ For purposes of Appeal, the proposed amendment(s) a)☐ will not be entered or b)☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

 The status of the claim(s) is (or will be) as follows:

 Claim(s) allowed: *13 and 14*.

 Claim(s) objected to: _____.

 Claim(s) rejected: *9-11*.

 Claim(s) withdrawn from consideration: _____.

8. ☐ The drawing correction filed on _____ is a)☐ approved or b)☐ disapproved by the Examiner.

9. ☐ Note the attached Information Disclosure Statement(s)(PTO-1449) Paper No(s). _____.

10. ☐ Other: _____

Khanh Dang
Primary Examiner

Continuation of 5. does NOT place the application in condition for allowance because: claims 9-11 are not patentable over the prior art of record. Note that Applicants' timely arguments have already been responded in the Final Office Action, under "Response to Arguments." Further response will be provided in due course if necessary. With regard to Applicants' argument regarding the use of "Official Notice." MPEP 2144.03 clearly states that "it might not be unreasonable to take official notice of the fact that it is desirable to make something faster, cheaper, better, or stronger without the specific support of documentary evidence. Furthermore, it might not be unreasonable for the examiner in a first Office action to take official notice of facts by asserting that certain limitations in a dependent claim are old and well known expedients in the art without (emphasis added) the support of documentary evidence provided the facts so noticed are of notorious character and serve only to 'fill in the gaps'." Further, MPEP 2144.03(c) also clearly states that in order to "adequately traverse such a finding, an applicant must specifically point out the supposed errors in the examiner's action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art. See 37 CFR 1.111(b). See also Chevenard, 139 F.2d at 713, 60 USPQ ... A general allegation that the claims define a patentable invention without any reference to the examiner's assertion of official notice would be inadequate."
Thus, in light of the MPEP 2144.03, it is clear that a mere allegation or a bald statement such as, "Applicants request that the Examiner cite a competent prior art reference in substantiation of these unsupported conclusions" (Applicants' remark, page 11, lines 16-17) is not adequate and does not shift the burden to the Examiner to provide evidence in support of the Official Notice. Allowing such a statement to challenge Official Notice would effectively destroy any incentive on the part of the Examiner to use it in the process of establishing a rejection of notoriously well-known facts. In the instant case, as noted above, Applicant has not provided any adequate information or argument so that on its face it creates a reasonable doubt regarding the circumstances justifying the Official Notice. Therefore, a presentation of a reference/document to substantiate the Official Notice is not deemed necessary at this time. The Examiner's taking of Official Notice has been maintained ..